

In the Drawings

Please substitute the attached Figure 1D, labeled "Replacement Sheet," for the previously un-labeled drawing figure appearing between Figures 1B,C and Figure 2A.

REMARKSI. Priority

In the Office Action, the Examiner states that the benefit of the earlier filing date under 35 U.S.C. 120 is being denied for Claims 1 and 5. (Office Action, Paragraph 2). In this regard, the Examiner states that the features of these claims were not disclosed or adequately supported by a proper disclosure in the parent application. As regards Claim 5, Applicant respectfully traverses the Examiner's finding.

Applicant notes that in Paragraph 7 of the Office Action, the Examiner has rejected Claim 5 under 35 U.S.C. 102(b) based on Balaban et al., (Science 1998) ("Balaban 1998"). In connection with that rejection, the Examiner states that Balaban 1998 teaches "a vaccine comprising the RAP polypeptide of claim 1 or an antigenically effective portion thereof, and an adjuvant which is pharmaceutically acceptable carrier." Applicant notes that Balaban 1998 is incorporated by reference into U.S. Patent No. 6,291,431, to which this application claims priority. Col. 12, lines 50-55.

Similarly, Applicant notes that in Paragraph 8 of the Office Action, the Examiner has stated that Balaban WO 99/32133 teaches a vaccine comprising the "RAP polypeptide of claim 1 or an antigenically effective portion thereof, and an adjuvant which is pharmaceutically acceptable carrier." This cited reference is a PCT based upon and claiming priority to the '431 Patent, to which this application also claims priority. The subject matter of this reference discussed by the Examiner in Paragraph 8 of the Office Action is also found in the '431 Patent.

Because, as the Examiner has stated, both the Balaban 1998 article and the Balaban PCT application teach a vaccine comprising the RAP polypeptide of claim 1 or an antigenically effective portion thereof and an adjuvant which is a pharmaceutically acceptable carrier, and because these teachings were also in the specification of the '431

Patent (either directly or by incorporation by reference), Applicant respectfully submits that the feature of Claim 5 was previously introduced and supported in the parent application, and that the claim of priority thereto should therefore be permitted.

## II. Drawings

In the Office Action, the Examiner objected to drawing Figures 1D and 5. With respect to Figure 1D, the Examiner noted that the figure was not properly labeled as Figure 1D. With respect to Figure 5, the Examiner stated that it refers to sequences without sequence identifying numbers being described within the figure itself or the brief description of the drawings within the specification.

In response to the objection to Figure 1D and in accordance with the requirements of 37 CFR 1.121(d), Applicant submits herewith a "Replacement Sheet," containing Figure 1D, previously unlabeled, with an appropriate label thereon.

In response to the objection to Figure 5, Applicant notes the amendment to the Brief Description of the Drawings, recited above, which identifies sequence identification number in GenBank for the Figure 5 sequence.

## III. Claim Objections

The Examiner has objected to certain informalities in Claims 1 and 5. (Office Action, Paragraph 4). In response, Applicant has amended these claims to correct these informalities.

## IV. Rejections Under 35 U.S.C. 112

### a. Section 112 (first paragraph)

In the Office Action, the Examiner has rejected Claim 5 based on 35 U.S.C. Section 112, first paragraph. (Office Action, Paragraph 5). In this regard, the Examiner states that

the Specification fails to set forth a specific antigenically effective portion of the RAP polypeptide.

In response, Applicant notes Paragraph 7 of the Office Action, where the Examiner acknowledges the disclosure, at page 12 of the specification, of a particular formula as an antigenically effective portion. Applicant notes that Paragraph 53 of the specification discloses more than one such formula, as follows:

The instant invention provides polypeptides for the prevention and treatment of *S. aureus* infections. These polypeptides comprise the general formula Y(K or S)PXTNF (SEQ ID NOS: 1 and 2), where X is C, W, or I, preferably W. In a further embodiment, the polypeptides may have the general formula IKKY(K or S) PXTNF (SEQ ID NOS:3 and 4), where X is C, W, or I, preferably W. The polypeptides are preferably at least 10 amino acids in length, more preferably at least seven amino acids in length.

Accordingly, Applicant respectfully submits that the specification sufficiently sets forth a specific antigenically effective portion of the RAP polypeptide.

**b. Section 112 (second paragraph)**

In the Office Action, the Examiner has rejected Claims 1 and 5 based on 35 U.S.C. Section 112, second paragraph, with respect to the use of the acronym RAP. (Office Action. Paragraph 6). In response, Applicant has replaced the acronym with phrase "RNAIII Activating Protein."

V. Rejections Under 35 U.S.C. 102(b)

a. Balaban 1998

In the Office Action, the Examiner has rejected Claim 5 based on the Balaban 1998 article discussed above. (Office Action, Paragraph 7). For the reasons discussed above, Applicant respectfully submits that Balaban 1998, which was incorporated by reference into the parent application hereof, is not citable prior art against the pending application pursuant to Section 102(b).

b. Balaban PCT

In the Office Action, the Examiner has rejected Claim 5 based on the Balaban PCT application discussed above. (Office Action, Paragraph 8). For the reasons discussed above, Applicant respectfully submits that the Balaban PCT application, which post-dates the filing of the parent application hereof, is not citable prior art against the pending application pursuant to Section 102(b).

In conclusion, Applicants respectfully submit that this Amendment, including the amendments to the Claims and in view of the Remarks offered in conjunction therewith, are fully responsive to all aspects of the objections and rejections tendered by the Examiner in the Office Action. Applicant respectfully submits that Claims 1 and 5 are now in condition for allowance. Applicants therefore earnestly solicit the issuance of a Notice of Allowance with respect to these claims.

If there are any fees incurred by this Amendment Letter, please deduct them from our  
Deposit Account No. 23-0830.

Respectfully submitted,

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